

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL D. WALSH,		:	
	Plaintiff	:	
		:	
vs.		:	No. 05-CV-3035
		:	
		:	
CONAGRA FOODS,		:	
	Defendant	:	

DEFENDANT’S MOTION TO COMPEL

Defendant ConAgra Foods hereby moves this Court for an Order compelling Plaintiff to respond to its Interrogatory No. 10 and in support thereof states as follows:

1. Plaintiff has filed claims of age discrimination and sexual harassment arising out of his employment with Defendant.

2. On August 11, 2005, Defendant served upon Plaintiff a First Set of Interrogatories. Interrogatory No. 10 instructed Plaintiff to “Identify all health care providers, including but not limited to physicians, medical doctors, psychiatrists, psychologists and therapists with whom you have consulted or treated from 1990 to the present, including the names of all individual providers, the identities of the practice with whom any individual provider was affiliated or employed, the addresses and telephone numbers of all providers and/or practices, and the dates and purpose of any treatments or consultations.”

3. On September 23, 2005, Plaintiff served his Answers to Defendant’s Interrogatories. Plaintiff objected to Interrogatory No 10 on the basis that “it would require Plaintiff to waive his medical privilege as well as his right to privacy.”

4. Subsequent to receiving Plaintiff’s objection, Defendant’s counsel has written to

Plaintiff's counsel on several occasions in an attempt to resolve the objection.

5. Defendant's counsel deposed Plaintiff on October 12, 2005. During that deposition, counsel asked several questions concerning Plaintiff's health care providers and related treatment. Plaintiff's counsel did not object to these questions.

6. Among the health care providers identified by Plaintiff in his deposition was "Lehigh Valley Practice", which he believed to be a family practitioner. Following the deposition, Defendant's counsel located two entities located in the Bethlehem, PA area which have names similar to the one identified by Plaintiff and served subpoenas upon both of them. Both entities contacted Defendant's counsel to advise that they had never treated Plaintiff.

7. Without additional information from Plaintiff concerning the identity and location of "Lehigh Valley Practice", Defendant will be unable to serve a subpoena upon the provider for the production of medical records.

8. In his Complaint, Plaintiff has alleged that he has suffered "embarrassment and humiliation" and has requested damages for pain and suffering. In addition, in his answer to Interrogatory No. 11, Plaintiff listed "loss of sleep and health" and "relationship with wife" as components of his damages.

9. By seeking emotional distress damages, Plaintiff has waived any claim of privilege and has placed his physical and emotional condition within the proper scope of discovery. See Sanchez v. U.S. Airways, Inc., 202 F.R.D. 131 (E.D. Pa. 2001); Sarko v. Penn-Del Directory Company, 170 F.R.D. 127 (E.D. Pa. 1997).

10. Discovery is scheduled to close on December 2, 2005. To the extent that the Court is unable to resolve this issue in sufficient time for Defendant to serve subpoenas upon any providers listed in response to Interrogatory No. 10, Defendant further requests that it be allowed to serve records subpoenas beyond the close of discovery.

WHEREFORE, for the reason set forth herein, Defendant respectfully requests that the Court grant its Motion to Compel, require Plaintiff to respond to Interrogatory No. 10, and to the extent necessary, allow Defendant to serve records subpoenas upon the entities identified by Plaintiff beyond the close of discovery on December 2, 2005.

Respectfully submitted,

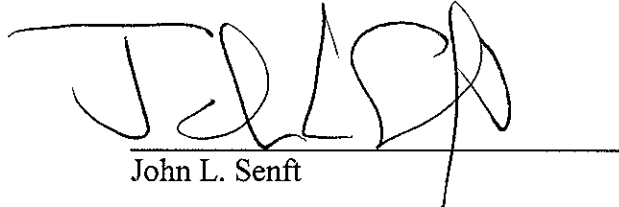
A handwritten signature in black ink, appearing to read 'J L Senft', written over a horizontal line.

John L. Senft, Esquire
Attorney I.D. No. 64486
Senft Law Firm LLC
105 Leader Heights Road, Suite 2
York, Pennsylvania 17403
(717) 747-9048

Attorneys for Defendant
ConAgra Foods, Inc.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 26.1(f)

I HEREBY CERTIFY that counsel for the parties have made a reasonable effort to resolve the dispute which is the subject matter of the foregoing Motion, and are unable to resolve the dispute without the Court's intervention.

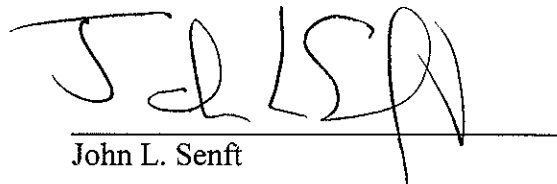


John L. Senft

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of November, 2005, I served Defendant's First Set of Interrogatories Addressed to Plaintiff by depositing the same in the United States mail, postage prepaid, at York, Pennsylvania, addressed as follows:

Donald P. Russo, Esquire
117 East Broad St.
P. O. Box 1890
Bethlehem, PA 18016-1890



John L. Senft